



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.06.2021

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.R.P. (MD) No. 770 of 2021 and

C.M.P. (MD) No. 4196 of 2021

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1. Mary Panneer Selvam

2. Robi

... Petitioners/Petitioners/
Defendants 8 & 12

Vs.

1. Victorial

... First Respondent/Petitioner/
Plaintiff

2. Esthack

Maria Arputham(died)

3. Loordhu

M.Ronickam(died)

Selvamony (died)

4. Joseph

5. Stanislas

6. Sobia Margarate

7. Syed Ali

... Respondents 2 to 9/Respondents 1 to 7 and 9 to
11/Defendants 1,3,6 to 8,10,12 & 13

Sukumaran

(Deleted from the array of party)

8. Chellathangam

9. Francis

Rayappan

(Deleted from the array of party)

Prayer: Civil Revision petition filed under Section 115 of C.P.C., to set aside the fair and decretal order in E.P.No.16 of 2020 in O.S.No.142 of 2000 dated 31.03.2021 on the file of the Principal District Munsif Court, Padmanabhapuram and allow the civil revision petition.

For Petitioners : Mr.M.V.Balamohan Thampi

* * *

O R D E R

This civil revision petition is directed against the order dated 31.03.2021 passed by the executing Court in E.P.No.16 of 2020 in O.S.No.142 of 2000 on the file of the Principal District Munsif, Padmanabhapuram.

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2. The first respondent herein is the decree holder and she filed the said execution petition for executing the final decree passed in her favour. The said execution petition was allowed and delivery was ordered. Questioning the same, this civil revision petition has been filed by the petitioners who are figuring as respondents 8 and 12 in the execution petition.

3. The learned counsel appearing for the revision petitioners submitted that Maria Arputham, husband of the first petitioner and the father of the second petitioner was the second defendant in the partition suit filed by the respondents herein. Maria Arputham died during the pendency of the suit. The second petitioner herein was a minor and he was not brought on record. That apart an erroneous preliminary decree was passed and on that basis, final decree was also passed. Such a final decree is sought to be enforced. He would also point out that the petitioners filed a petition to set aside the preliminary decree. Since there was a delay in filing such petition, the same was dismissed. Challenging the same, the petitioners have since filed C.R.P.(MD)No.833 of 2012 before this Court. He would also state that questioning the final decree, first appeal has also been filed.

4. The petitioners ought to have obtained appropriate relief in the said civil revision petition and in the said first appeal that are said to be still pending. The executing Court cannot be faulted for having passed the impugned order of delivery. The petitioners cannot make a collateral challenge. I decline to interfere with the order impugned in this civil revision petition.

5. This civil revision petition stands dismissed. However, it is made clear that the rights of the parties would abide by the outcome of the proceedings that are still pending. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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To:

The Principal District Munsif,
Padmanabhapuram.

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